made only to a few, was necessary. The declaration need not necessarily be made in the presence of the *tsip*, nor before she has left the house. The reason for this custom was, witness said, because at the time of the marriage ceremony invitations were given to people, and it was only right to let people know of the divorce. It would be enough if the man merely communicated his intention to his relations in the course of casual conversation. If he merely sent her to another house because she did not agree with the principal wife, and he continued to visit her and make her an allowance, that did not amount to a divorce.

*Mr. Hoahing*, in the course of his reply, remarked there there was no such thing in Singapore as divorce among the Chinese. The evidence of the Consul-General related only to Chinese in China.

The Chief Justice: "That is contrary to the opinion of the Privy Council in regard to the Six Widows' Case. The Privy Council concurred with the conclusion which Mr. Justice Braddell arrived at that concubinage was recognised as a legal institution of Chinese law, conferring upon a *tsip* legal status of a permanent nature which, subject to divorce, entitled her to maintenance during the man's lifetime." They seemed to recognise that a person who took a *tsip* or secondary wife could divorce her in some way."

*Hoahing* for Tan Sai Im.

*Eber* for Chan Hong Neo.

**SHAW, C.J.**—After dealing with the facts, said that there could be no doubt that Tan Sai Im was taken by Siew Guan as a *tsip* or secondary wife. The case for the defendant had been mainly put on the ground that she had ceased to be a secondary wife at the time of Siew Guan's death. There was no assistance to be got from the law Reports or the text-books as to what was necessary to constitute a divorce under Chinese customs, but it had been recognised in the Six Widows' case and also in the case of *Cheang Thye Pin* v. *Tan Ah Loy* that a Chinese man could divorce his *tsip* or secondary wife.

The only evidence he had of the manner in which that could be done by Chinese custom was the evidence of the Consul-General for China, who had stated that divorce was recognised, that it was at will of the husband, who was entitled to divorce his wife if she were disobedient to himself or his principal wife, if she did not conform to the household regulations, or was guilty of immoral conduct. The custom was that the husband should notify the dissolution either to his near relations or to his clansmen. It appeared that the dissolution was something like the inception of the union, that no actual ceremony was needed, and it depended upon the actual intention and notoriety given to the union or dissolution.

In the present case there was evidence that there was a disturbance in the house, and that Tan Sai Im was accused of improper conduct and was turned out of the house. Three witnesses were called to give evidence that the husband told them what had happened and that he had ceased to have anything further to do with her. If that evidence was to be believed it certainly constituted a divorce according to the evidence of custom given by the Consul-General. There were several circumstances which seemed to point to the inevitable conclusion that the parties thought that the dissolution was complete. He had come to the conclusion that the evidence of the defence should be accepted and that Tan Sai Im was not, at the time of Siew Guan's death, his secondary wife. The answer to the issue would be that Tan Sie Im was not a lawful widow of the deceased.

Solicitors for Tan Sai Im (Plaintiff in the Issue)—*Aitken & Ong Siang.*

Solicitors for Chan Hong Neo (Defendant in the Issue)—*Chan & Eber.*

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[APPELLATE CIVIL JURISDICTION]

**PHERDZAHA MANEEKJI FRAMROZ—Plaintiff.**

**and**

**NOWROJI RUSTAMJI MISTRI—Defendant.**

[SINGAPORE CIVIL APPEAL No. 8 of 1924]

[SINGAPORE SUIT No. 560 OF 1924.]

*Contract of Service—Stipulation—restraint of trade—aerated water manufacturer—employment of manager—threat of employee to establish similar business—reasonableness of restriction.*

In 1913 the plaintiff, a mineral water manufacturer and merchant carrying on business in Singapore, engaged the defendant as the manager of the business for a period of ten years, on the condition that "after the employee ceased to be employed whether by effluxion of time or for any other reason he should not for a period of 5 years carry on or be concerned or interested in carrying on a similar business in Singapore or any other place where the plaintiff was carrying a similar business at the date of such termination or solicit any of the customers of the said business or deal otherwise than with the persons then carrying on the said business." The defendant's services terminated on the 1st of November 1923. By notice in writing the defendant informed the plaintiff of his intention to commence a similar business on his own account. In this action the plaintiff claimed an injunction to restrain the defendant from carrying on business as a mineral water manufacturer in opposition to the plaintiff.

*Held*, on the evidence, that, there being no trade secrets in the plaintiff's business that required to be protected and the defendant not being in a position to detach the plaintiff's customers, the restrictive covenant was not reasonably necessary for the protection of the employer and unenforceable and void.

*Upcott (Laycock)* with him, for the plaintiff.

*G. S. Carver*, for the respondent.

*Cur. Ad. Vult.*

**SHAW, C. J.**—By an agreement in writing dated the 27th October 1913 the plaintiff employed the defendant as manager of his business of aerated water manufacturer and seller carried on by him at No. 87 Cecil Street, Singapore, for the term of ten years from the 1st November 1913.

By clause 8 of the agreement it was provided as follows:— "After the employee ceases to be employed under this agreement.....he shall not for a period of five years carry on or be concerned or interested in carrying on any similar business in the island of Singapore or any other place where the employer is carrying on a similar business at the date of such termination or solicit any of the customers of the said business or deal otherwise than with the persons then carrying on the said business."

The employment has now terminated and the defendant asserts the right, notwithstanding clause 8 of the agreement referred to, to carry on business in Singapore as an aerated water manufacturer on his own account.

The plaintiff has brought this action claiming an injunction to restrain him from doing so.

The agreement contained in clause 8 is clearly in restraint of trade and therefore, *prima facie*, void. To use the words of Lord Macnaghten in *Nordenfeldt* v. *Maxim Nordenfeldt Guns and Ammunition Co.*, 1894 A.C. 535 at page 565, "the public have an interest in every person carrying on his trade freely: so has the individual. All interference with individual liberty of action in trading, and all restraints of trade of themselves, if there is nothing more, are contrary to public policy, and therefore void. That is the general rule."

The learned Law Lord then goes on to state the circumstances in which such restraints are permissible. "It is sufficient justification, and, indeed, it is the only justification, if the restriction is reasonable—reasonable that is, in reference to the interests of the parties concerned and reasonable in reference to the interests of the public."

The correctness of the rule stated by Lord Macnaghten and of the scope of the exception permitted is affirmed by the House of Lords in the subsequent cases of *Mason* v. *Provident Clothing and Supply Co., Ltd.* 1913 A.C. 724, and *Morris* v. *Saxelby*, 1916 A.C. 688.

The question however as to what circumstances under the restriction are reasonable with reference to the interests of the parties concerned and of the public has received different interpretations from different Judges and at different times. It is however now definitely established that a covenant in a service agreement intended solely to prevent competition of the use of personal skill and knowledge acquired by an employee in the employer's business are not permissible. This is clearly pointed out in the judgment of Lord Parker in *Morris* v. *Saxelby* at page 709 "Whenever such convenants have been upheld it has on the ground, not that the servant or apprentice would, by reason of his employment or training, obtain the skill and knowledge necessary to equip him as a possible competitor in the trade, but that he might obtain such personal knowledge of and influence over the customers of his employer, or such an acquaintance with his employer's trade secrets as would enable him, if competition were allowed, to take advantage of his employer's trade connections or utilize information confidentially obtained."

That it is impossible to justify the provisions of clause 8 of the agreement under consideration in their entirety appears to me to be clear. The provision against carrying on business in any place other than the Island of Singapore where the employer is carrying on business, and the prohibition against dealing otherwise than with the persons carrying on the plaintiff's business, plainly go beyond anything reasonably legitimate for the plaintiff's protection. But although the Court should not, as stated by Lord Moulton in *Mason* v. *Provident Clothing Co., Ltd.* at page 749, come to the assistance of an employer who has exacted a covenant deliberately framed in unreasonably wide terms and carve out of this void covenant the maximum of what the employer might validly have required, still if the part that is reasonable is clearly severable it may be enforced.

The provision in this agreement against being concerned in a similar business in the Island of Singapore appears to me to be so severable, and I see no reason why it should not be enforced if it is in itself necessary and reasonable.

In considering whether it is reasonable and necessary on either of the two grounds mentioned by Lord Parker in his judgment quoted above I have to consider the effect of the evidence given before me. I have no hesitation in holding that there are no trade secrets in the plaintiff's business that require to be protected, and that the defendant, whilst employed in that business acquired no special knowledge other than he would have acquired in any properly conducted business of the same character.

As to the question of the reasonableness of the restriction to prevent the defendant using any influence he may have obtained over the

plaintiff's customers whilst in the plaintiff's business to detach those customers therefrom, I have felt more doubt. On the evidence, however, I do not think that the nature of the defendant's employment was such that he was brought into that personal touch with the customers of the business as would put him in a position to so detach them. I accept his evidence that he did not act as a canvasser, and seldom saw the customers of the business. The employment of the manager of a mineral water manufactury is a very different one to that of the managing clerk of a solicitor, which was the employment under discussion in *Fitch* v. *Dewes* 1921 A.C. 158, and in the ordinary way such a manager would appear to be unlikely to acquire special personal influence over the customers of the business.

The plaintiff has therefore failed to satisfy me that there exist in the present case any special circumstances to take the agreement out of the general rule avoiding covenants in restraint of trade. I must therefore refuse the injunction asked for, and dismiss the action with costs.

From this Judgment the plaintiff appealed and the Appeal was heard on the 20th November 1924 by Whitley, J. (presiding), Barrett-Lennard and Acton, JJ. The grounds of appeal were that:—

1. The Learned Chief Justice was wrong in finding that there were no trade secrets in the appellant's business which required to be protected and that the respondent acquired no special knowledge other than what he could have acquired in any properly conducted business of the same character and that he did not acquire any special relationship with the customers of the business,
2. The learned Chief Justice was wrong in placing the onus of proof of reasonableness of the agreement on the plaintiff in the action.
3. The learned Chief Justice was wrong in holding the restriction was not reasonable in reference to the interests of the parties concerned and of the public.

Their Lordships delivered oral judgments upholding the decision of the Court below.

*Knowles* (*Laycock* with him), for the appellant.

*G. S. Carver*, for the respondent.

Solicitors for the appellant—

*Braddell Brothers.*

Solicitors for the respondent—

*Donaldson & Burkinshaw.*

[APPELLATE CIVIL JURISDICTION]

**CHEAH LEONG KEAH—Plaintiff**
**(Respondent)**

**vs.**

**MYDIN BIN TAMBY BAPPOO—Defendant.**
**(Appellant)**

[PENANG DISTRICT COURT SUMMONS No. 459 OF 1932]

[DISTRICT COURT APPEAL No. 8 OF 1932.]

*Court—District Court—Jurisdiction—landlord and tenant—Court Ordinance S. 43 (1).*

In an action for recovery of possession it was proved that the person in possession was a tenant at will of the original owner of the property and, upon the transfer of the property, was a tenant at sufferance of the subsequent owner.

*Held*, that there being the necessary relationship of landlord and tenant under S. 43 (1) Courts Ordinance and no *bona fide* question of title being involved, the action was rightly brought in the District Court.

The facts can be summarised shortly as follows:—

L. M. M. Meyapah Chetty purchased some land, including Lot 231 T.S. IX N.E.D. Penang in April 1929, and in July 1929 he executed a promissory note in favour of Cheah Leong Keah, the plaintiff, upon which he had endorsed a memorandum stating that the title deeds of certain property, including Lot 231, had been deposited with the plaintiff with intent to create an equitable mortgage thereof for securing repayment of the principal sum and interest due upon the promissory note. On the 30th September, 1929 L.M.M. Meyapah Chetty signed a document in the following terms:—

> "I L. M. M. Meyapah Chetty hereby agree with T. B. Mydin of Trusan Road, Penang as follows: In consideration of valuable services rendered by you in connection with the landed property at Sungei Pinang of my principal I agree on behalf of my principal to convey free in your favour or in the name of your son Osman the Lot 231 T.S. IX Penang free absolutely."
>
> "This gift being subject to the completion of the suit in respect of Lot 81 T.S. IX also if this suit prove unfavourable to the plaintiff in this suit then the above gift will be reduced to only payment of $650 and costs of the building erected by you on the said lands."

It appears that the plaintiff therein referred to was L. M. M. Meyapah Chetty who in all these proceedings was acting as attorney of S. M. S. Letchumanan Chetty in whose name the land was standing. The suit did prove unfavourable to the Chetty. It was not disputed that the defendant had built the house No. 128 Trusan Road on the land. The exact terms on which he did so were never disclosed. The house appears to have been built in 1928. Early in 1931 the plaintiff applied to the Court for a declaration that he was to be parties intended that the house should be immoveable property. The agreement is to the effect that the Chetty would either transfer the land (and